

# **Board of Contract Appeals**

General Services Administration  
Washington, D.C. 20405

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September 15, 2005

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GSBCA 16633-RELO

In the Matter of GARY P. MATHIS

Gary P. Mathis, FPO Area Europe, Claimant.

Bruce Haefner, Assistant Counsel, Office of Counsel, Office of Civilian Human Resources, Department of the Navy, Washington Navy Yard, Washington, DC, appearing for Department of the Navy.

**DeGRAFF**, Board Judge.

Agencies lack the authority to pay employees for transportation expenses unless the employees are performing official travel. In addition, they lack the authority to pay employees for losses they sustain when they sell their possessions in connection with transfers.

## Background

In early 2002, the Department of the Navy's Human Resources Service Center in Eastcote, United Kingdom, advertised for a human resources specialist. When no qualified candidates applied for the position, the supervisor at the service center contacted Mary Mathis and asked whether she would like to apply. Mrs. Mathis and her husband, Gary, an information technology specialist, were working for the Navy in the continental United States. The supervisor was interested in Mrs. Mathis because she had served overseas as a supervisory personnel staffing specialist for several years and had a great deal of expertise working with the data system used by the service center. Although Mrs. Mathis was interested in the position, she told the Navy she would consider a transfer to Eastcote only

if her husband would have a job there. At that time, there were no information technology specialist vacancies in the Eastcote area.

In May 2002, an information technology specialist position became available in Eastcote and the supervisor at the service center believed there were no qualified local candidates who could fill the position. The supervisor contacted Mrs. Mathis again and asked whether she was still interested in the human resources specialist vacancy if a position could also be found for her husband. Mrs. Mathis was interested, so the service center supervisor asked Mrs. Mathis to forward her résumé and to have Mr. Mathis forward his résumé to the supervisor for review. The supervisor then contacted Mr. Mathis to discuss his qualifications and the position available in Eastcote. The supervisor decided Mr. and Mrs. Mathis had excellent qualifications and the specific skills she wanted. In addition, they both had previous experience working overseas and they could be selected noncompetitively because neither of them would receive promotions if they filled the vacant positions.

The supervisor at the service center told Mr. and Mrs. Mathis that only Mrs. Mathis would receive permanent change of station orders, and said Mr. Mathis would travel as his wife's dependent. The paperwork the supervisor prepared said Mrs. Mathis was the primary person being hired.

On June 13, 2002, the Navy sent both Mr. and Mrs. Mathis employment offer letters with several attachments, including a transportation agreement and a permanent change of station questionnaire. The Navy refers to these as "standard" letters and the letters are, in fact, nearly identical. The letters told Mr. and Mrs. Mathis they would receive travel orders. However, a few days after the questionnaires were sent, the supervisor at the service center told Mrs. Mathis that only she should complete the questionnaire, which she did. On her questionnaire, which she signed on June 21, Mrs. Mathis listed Mr. Mathis as a family member who would accompany her when she moved and as one who had not been authorized relocation expenses. Although Mr. Mathis did not complete the permanent change of station questionnaire, he did sign a transportation agreement. The purpose of the agreement was to establish Mr. Mathis's eligibility for travel and transportation allowances and other related, authorized allowances.

On July 2, 2002, the Navy issued permanent change of station orders to Mrs. Mathis. The orders listed Mr. Mathis as her dependent. Mr. and Mrs. Mathis arrived at their new duty station in Eastcote on August 1, 2002.

In late February 2005, Mr. Mathis asked the Navy to reimburse him for costs he claimed he incurred in connection with his transfer to Eastcote. The costs consist of money he says he lost when he sold a vehicle for below book value before he moved to Eastcote,

transportation costs he incurred in the United States after he sold the car, commuting costs he incurred while in Eastcote, and money he lost when he sold household goods for less than they were worth before he moved to Eastcote. The Navy denied the claim because it did not believe Mr. Mathis had transferred in the interest of the Government. In its submission to us, the Navy says the costs Mr. Mathis claims would not be reimbursable even if his transfer had been in the interest of the Government.

In May 2005, Mr. Mathis asked us to review the Navy's decision to deny his claim. Mr. Mathis contends his transfer was in the interest of the Government.

### Discussion

When the Government transfers an employee from one permanent duty station to another and the transfer is in the interest of the Government, the Government will pay many of the employee's relocation expenses, as permitted by statute and regulation. When a transfer is made primarily for the convenience or benefit of an employee, however, the Government will not pay the employee's relocation expenses. 5 U.S.C. § 5724 (2000). Federal agencies have substantial discretion to determine whether a transfer is in the interest of the Government and we will not reverse such a determination unless we find it to be arbitrary, capricious, or clearly erroneous. *Steven D. Hanson*, GSBCA 14270-RELO, 97-2 BCA ¶ 29,314.

Even if we could be persuaded to reverse the Navy's determination and to conclude Mr. Mathis's transfer was in the interest of the Government, we could not grant Mr. Mathis's claim for transportation expenses. Although an agency can reimburse an employee for transportation expenses if the employee is performing official business travel, 41 CFR pt. 301 (2002), there is no evidence to suggest the transportation costs Mr. Mathis incurred in the United States after he sold his car were for official business travel. The transportation expenses he incurred in Eastcote were commuting expenses and are not reimbursable because an employee's commute does not constitute official business travel. *Carrie L. McWilliams*, GSBCA 15028-RELO, 99-2 BCA ¶ 30,497.

Likewise, even if we were inclined to conclude Mr. Mathis's transfer was in the Government's interest, there is no authority in the statutes and regulations to reimburse Mr. Mathis for the money he says he lost when he sold his car for less than the book value and his household goods for less than they were worth. The statutes and regulations are designed to reimburse employees for many of the expenses they incur in connection with transfers. However, Mr. Mathis wants to be reimbursed for losses, not expenses. The regulations regarding miscellaneous relocation allowances prohibit agencies from reimbursing employees for losses they incur when they sell personal property, 41 CFR

302-16.203 (a), and we know of no other authority regarding another type of relocation benefit which would allow the Navy to reimburse the losses Mr. Mathis claims to have sustained.

If Mr. Mathis incurred any expenses which would be reimbursable according to the statutes and regulations if his transfer had been in the interest of the Government, he should submit his claim to the Navy for review. If the Navy decides to reject the claim, Mr. Mathis may submit it to us and we will review the Navy's decision.

We deny the February 2005 claim because even if Mr. Mathis's transfer had been in the interest of the Government, the Navy would lack the authority to pay him for his transportation expenses and his claimed losses.

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MARTHA H. DeGRAFF  
Board Judge